

To: New Jersey Law Revision Commission
From: Eileen Funnell
Re: *Jones v. Morey's Piers, Inc.* and the 90-day Deadline of N.J.S. 59:8-8
Date: November 5, 2018

MEMORANDUM

Executive Summary

In the case of *Jones v. Morey's Piers, Inc.*, the Supreme Court of New Jersey considered whether N.J.S. 59:8-8 barred the Morey defendants from asserting contribution and common-law indemnification claims against the PleasanTech Academy Education Association, which was treated as a public entity for purposes of the Tort Claims Act. The Court also considered the trial court's application of the Comparative Negligence Act and Joint Tortfeasors Contribution Law when, as here, a party alleged to be a joint tortfeasor was not a defendant at the time of trial.¹

The Supreme Court held that because the plain language of N.J.S. 59:8-8 does not exempt a defendant's third-party claim from being time barred, and neither the plaintiffs nor the Morey defendants served a timely notice of claim under N.J.S. 59:8-8, the PleasanTech Academy Education Association's motion to dismiss the Morey defendants' third-party complaint was granted.² The Supreme Court also decided to allow the Morey defendants to seek an allocation of fault to the PleasanTech Academy Education Association at a future trial, since this decision would reaffirm the individual goals of N.J.S. 59:8-8, the Comparative Negligence Act, and the Joint Tortfeasors Contribution Law.³

Background

Jones v. Morey's Piers, Inc. arose after the death of eleven-year-old Abiah Jones, who fell from the "Giant Wheel" amusement ride in Wildwood, New Jersey, on June 3, 2011. At the time of her death, Abiah was a student at PleasanTech Academy, a charter school in Pleasantville, and was on a visit to the amusement park as part of a school trip. PleasanTech Academy is operated by the PleasanTech Academy Education Association ("Association").⁴ The Plaintiffs were Abiah's parents, Twanda and Byron Jones, who filed a wrongful death action against Morey's Pier, Inc. ("Morey Defendants"), the owners and operators of the amusement ride.⁵

¹ *Jones v. Morey's Pier, Inc.*, 230 N.J. 142, 145 (2017).

² *Id.* at 148.

³ *Id.* at 166.

⁴ *Id.* at 147.

⁵ *Id.*

The Plaintiffs alleged that Abiah’s death resulted from the Morey Defendants’ negligent operation of the amusement park, claiming that the Morey Defendants failed to: “warn of the dangerous wind conditions,...provide adequate safety instructions,...install proper safety measures to prevent falls from the ‘Giant Wheel’ carriages, inadequately maintained the locks on the carriages, and failed to lock the door on the carriage from which the child fell.”⁶ In response, the Morey defendants filed a third-party claim for contribution and common-law indemnification against the Association, alleging that the Association was negligent and that its negligence was an immediate cause of Abiah Jones’s death.⁷ Neither the Plaintiffs nor the Morey Defendants served a notice of claim pursuant to the Tort Claims Act on the Association pursuant to N.J.S. 59:8–8 within 90 days of Abiah’s death. As a result, the Association moved for summary judgment pursuant to Rule 4:46–2, and asserted that the Tort Claims Act barred the Morey Defendants’ claims. The Morey Defendants countered that their cross-claims were not barred by N.J.S. 59:8–8, suggesting that provision applies only to claims asserted by plaintiffs. The trial court agreed and dismissed the Association’s motion for summary judgment, and the Association appealed.⁸

The trial court interpreted N.J.S. 59:8–8 to limit only a plaintiff’s right to assert a claim against a public entity; concluding that N.J.S. 59:8–8 does not require the service of a notice of claim as a prerequisite to a defendant’s contribution or common-law indemnification claims against a joint tortfeasor that is a public entity.⁹ Amicus curiae the City of Newark argued that N.J.S. 59:8–8 bars any party that fails to comply with the Tort Claims Act’s notice provisions from suing a public entity, even if that public entity is a joint tortfeasor that may otherwise be liable for contribution. Similarly, amicus curiae New Jersey Municipal Excess Liability Joint Insurance Fund contended that N.J.S. 59:8–8 bars any claim against a public entity unless a notice of claim is served and supports the allocation of a percentage of liability to an entity that is immune under the Tort Claims Act. The Attorney General of the State of New Jersey, also acting as amicus curiae, asserted that the Tort Claims Act mandates a determination that the Association is immune from all claims, and suggested that the Court reconcile the statutes at issue by permitting the jury to apportion a percentage of fault to the Association, and limiting the Morey defendants’ liability to the percentage of fault that the jury allocates to it.¹⁰

According to N.J.S. 18A:36A-6(b), as the operator of a charter school, the Association may “[s]ue and be sued, but only to the same extent and upon the same conditions that a public entity can be sued.”¹¹ When the Legislature enacted N.J.S. 59:8–8, the statute was intended to impose a strict constraint on public entity liability. In the case of *Beauchamp v. Amedio*, it was established that the Legislature intended the statute to:

⁶ *Id.* at 150.

⁷ *Id.* at 151.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 152.

¹¹ N.J.S. 18A:36A-6(b).

(1) to allow the public entity at least six months for administrative review with the opportunity to settle meritorious claims prior to the bringing of suit; (2) to provide the public entity with prompt notification of a claim in order to adequately investigate the facts and prepare a defense; (3) to afford the public entity a chance to correct the conditions or practices which gave rise to the claim; and (4) to inform the State in advance as to the indebtedness or liability that it may be expected to meet.¹²

Statute

N.J.S. 59:8-8

A claim relating to a cause of action for death or for injury or damage to person or to property shall be presented as provided in this chapter¹ not later than the 90th day after accrual of the cause of action. After the expiration of six months from the date notice of claim is received, the claimant may file suit in an appropriate court of law. The claimant shall be forever barred from recovering against a public entity or public employee if:

- a. The claimant failed to file the claim with the public entity within 90 days of accrual of the claim except as otherwise provided in N.J.S.59:8-9; or
- b. Two years have elapsed since the accrual of the claim; or
- c. The claimant or the claimant's authorized representative entered into a settlement agreement with respect to the claim.

Nothing in this section shall prohibit a minor or a person who is mentally incapacitated from commencing an action under this act within the time limitations contained herein, after reaching majority or returning to mental capacity.¹³

As the Supreme Court noted, the opinions interpreting the statute have reached divergent results, seemingly because the statute is expansively phrased. The Legislature failed to distinguish between a plaintiff's claim and a defendant's cross-claim or third-party claim against a public entity. However, the statute also did not exempt any category of claims from the ninety-day time limit.

The Supreme Court said that the statute's intention is clear: "it governs contribution and indemnification claims brought by defendants, as it governs direct claims asserted by plaintiffs."¹⁴ The Court also suggested that if N.J.S. 59:8-8 was interpreted to permit a defendant to assert a contribution or indemnification claim against a public entity or employee months or years after the

¹² *Beauchamp v. Amedio*, 164 N.J. 111, 121-22 (2000).

¹³ N.J.S. 59:8-8.

¹⁴ *Jones v. Morey's Pier, Inc.*, 230 N.J. 142 (2017) at 157.

plaintiff's claim ensued, it would undercut the Legislature's goal, which was to "permit public entities to promptly investigate claims, correct the conditions or practices that gave rise to the claim, prepare a defense, and assess the need for reserves."¹⁵ Although there is no language specifically addressing a defendant's cross-claim or third-party claim as it relates to the 90-day time limit found in N.J.S. 59:8-8, the Supreme Court found that the Morey Defendants were subject to the time restriction based on the plain language of the statute, and therefore the Association was entitled to a summary judgment.¹⁶

The Morey Defendants argued that if the Court barred their third-party claims under N.J.S. 59:8-8, it should at least authorize the jury to allocate some fault to the Association so that Morey's share of an award of damages would not exceed the percentage of fault apportioned to them by the jury.¹⁷ The Supreme Court recognized that when N.J.S. 59:8-8 is applied to dismiss a defendant's cross-claim or third-party complaint against a public entity, it could "deprive a defendant of its right to pursue a claim against a joint tortfeasor before the defendant is aware that the claim exists."¹⁸ However, the Court suggested that the statutory scheme for the allocation of fault to joint tortfeasors, as seen in the Comparative Negligence Act and Joint Tortfeasors Contribution Law, eases this potential impact on a defendant when a claim is barred.

According to N.J.S. 2A:15-5.2, when the question of liability is in dispute, a factfinder determines the total damages and allocates fault in accordance with the statute, and the trial court can then mold the judgment based on those findings.¹⁹ The plaintiff may recover "[t]he full amount of the damages from any party determined by the trier of fact to be 60% or more responsible for the total damages."²⁰ The plaintiff's recovery from "any party determined by the trier of fact to be less than 60% responsible for the total damages" is limited to "[o]nly that percentage of the damages directly attributable to that party's negligence or fault," as determined by the factfinder.²¹ A defendant compelled to pay more than the percentage of damages allocated to them has a remedy under the Comparative Negligence Act. The Comparative Negligence Act provides that when an injury is caused by the conduct of joint tortfeasors, and a joint tortfeasor pays the judgment "in whole or in part," that party shall be entitled to recover contribution from other joint tortfeasors "for the excess so paid over his pro rata share."²²

Mindful of these statutes, the Supreme Court considered whether the objectives of the Tort Claims Act, the Comparative Negligence Act, and the Joint Tortfeasors Contribution Law are furthered if fault was allocated to the Association, as long as the Morey defendants present

¹⁵ *Id.*

¹⁶ *Id.* at 158.

¹⁷ *Id.* at 152.

¹⁸ *Id.* at 158.

¹⁹ N.J.S. 2A:15-5.2.

²⁰ N.J.S. 2A:15-5.3(a).

²¹ N.J.S. 2A:15-5.3(c).

²² N.J.S. 2A:53A-3.

evidence at trial that the Association's negligent conduct was a legitimate cause of Abiah Jones's death. Even though the Morey Defendants' initial contribution and common-law indemnification claims were time barred under the Tort Claims Act, the Supreme Court determined that by permitting the Morey defendants to seek an allocation of fault to the Association at trial case, the goals of all three statutes would be achieved.²³ Further, the Supreme Court reaffirmed that if a jury believes that the Morey Defendants have proven that the Association's alleged negligence was a cause of Abiah Jones's death, the Court may allocate a percentage of fault to the Association pursuant to N.J.S. 2A:15-5.2.²⁴

Conclusion

Staff seeks authorization to conduct additional research and outreach regarding this issue in order to determine whether modifying the Tort Claims Act would aid in interpreting the statute and potentially obviate the need for additional litigation regarding the issue addressed in *Jones v. Morey's Pier, Inc.*

²³ *Jones v. Morey's Pier, Inc.*, 230 N.J. 142, 165 (2017).

²⁴ *Id.* at 169-170.